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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 NORTHWEST ADMINISTRATORS, INC.,

8 Plaintiff,

9 v.

10 SANTA CLARITA CONVALESCENT
11 CORPORATION, *et al.*,

12 Defendants.

No. C17-1001RSL

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

13 This matter comes before the Court on “Defendant 23801 Newhall Avenue, LLC’s
14 Motion for Summary Judgment.” Dkt. # 37. Plaintiff seeks to hold defendant 23801 Newhall
15 Avenue, LLC, jointly and severally liable for a liability its predecessor, Santa Clarita
16 Convalescent Corporation (“SCCC”), incurred when it withdrew from an underfunded multi-
17 employer pension plan. 23801 Newhall purchased a 99-bed skilled nursing facility from SCCC
18 through an Asset Purchase Agreement that closed on January 5, 2015. Plaintiff subsequently
19 learned of the transfer and assessed withdrawal liability against SCCC as of the date of the
20 transfer. The Court entered judgment against SCCC for the full amount claimed. 23801 Newhall
21 seeks dismissal of the claims against it because, as an asset purchaser with no knowledge of
22 SCCC’s withdrawal liability, equity does not favor imposing SCCC’s statutory liability on
23 23801 Newhall.¹

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25 ¹ Because the Court finds this argument persuasive, it need not determine whether plaintiff was obligated
26 to send written notice of the calculated withdrawal liability and a demand for payment to both the predecessor and
successor companies under 29 U.S.C. § 1399(b)(1).

1 Having reviewed the memoranda, declarations, and exhibits submitted by the parties,² the
2 Court finds that 23801 Newhall is entitled to judgment as a matter of law. The general rule is
3 that the purchaser of assets does not acquire the seller's liabilities related to those assets.
4 Resilient Floor Covering Pension Tr. Fund Bd. of Trustees v. Michael's Floor Covering, Inc.,
5 801 F.3d 1079, 1090 (9th Cir. 2015). An exception arises under the Employee Retirement
6 Income Security Act of 1974 ("ERISA"), as amended by the Multi-Employer Pension Plan
7 Amendments Act, 29 U.S.C. § 1001-1461, where there is substantial continuity in the business
8 operations after the sale and the buyer had prior notice of the seller's withdrawal liability.
9 Resilient Floor, 801 F.3d at 1092-93. It is undisputed that 23801 Newhall continued to operate
10 the skilled nursing facility after the sale. With regards to the second element of the successor
11 liability analysis, plaintiff argues that a reasonable fact finder could infer that, at the time of
12 purchase, 23801 Newhall knew that SCCC faced withdrawal liability and/or should have known
13 of the potential liability.

14 The evidence does not support a finding of actual knowledge. The only evidence in the
15 record shows that 23801 Newhall and its principal, Henry Kim, had not previously purchased,
16 owned, or operated an entity affiliated with a labor union or participating in a multi-employer
17 pension plan. In the Asset Purchase Agreement, SCCC expressly warranted that it did not
18 sponsor, maintain, or contribute to any pension or benefit plans. 23801 Newhall was unfamiliar
19 with the concept of withdrawal liability. The fact that SCCC had and disclosed a collective
20 bargaining agreement with the Teamsters union does not support a finding of actual notice of
21 potential withdrawal liability: a collective bargaining agreement can exist separately from any
22 obligation to fund employee pension or benefit plans and, even if such a plan exists, withdrawal
23 liability does not automatically arise when an employer sells the assets of the business. Nor does
24 the fact that 23801 Newhall negotiated a broad indemnification provision which covered

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26 ² This matter can be decided on the papers submitted. Defendant's request for oral argument is therefore
DENIED.

1 liabilities arising under ERISA suggest actual knowledge of a multi-employer pension plan or
2 potential withdrawal liability: the evidence shows the language was imported from a prior
3 transaction that did not involve any union participation at all.

4 In the absence of evidence of actual knowledge, plaintiff argues that, once the collective
5 bargaining agreement was disclosed, 23801 Newhall had a duty to investigate further to
6 determine whether SCCC was participating in a multi-employer pension plan and whether
7 withdrawal liability could be triggered by the transaction. The Ninth Circuit recently clarified
8 that an asset purchaser can be held liable for the seller's withdrawal liability if it had
9 constructive knowledge of the liability. Under that standard, "purchasers are deemed to have
10 notice of any facts that one using reasonable care or diligence should have." Heavenly Hana
11 LLC v. Hotel Union & Hotel Indus. of Hawaii Pension Plan, 891 F.3d 839, 845 (9th Cir. 2018)
12 (internal quotation marks omitted). The Ninth Circuit reasoned that "[r]equiring purchasers to
13 make reasonable inquiries into the existence of withdrawal liability advances the congressional
14 interest in preventing underfunding in multi[-]employer pension plans." Id. at 846. The court's
15 ruling clearly and intentionally incentivizes purchasers to identify any potential withdrawal
16 liability and ensure that it is accounted for during an asset purchase. Id. at 846-47.

17 Still, "the origins of successor liability are equitable, [and] fairness is a prime
18 consideration in its application." Id. at 846 (quoting Resilient Floor, 801 F.3d at 1091). A
19 constructive knowledge standard is not the same as strict liability: withdrawal liability will
20 transfer to a successor only if (a) the purchaser, using reasonable care or diligence, would have
21 discovered the withdrawal liability and (b) imposition of liability would be fair given the
22 circumstances. Id. at 847. In Heavenly Hana, the purchaser operated other hotels that
23 participated in multi-employer pension plans, knew that the seller contributed to such a plan,
24 and, in previous deals, had instructed its due diligence team to investigate potential withdrawal
25 liability. In this transaction, the purchaser chose to negotiate a provision requiring the seller to
26 provide notice of any plan deficiencies: it made no effort to review the annual funding notices

1 the seller had received alerting it to deficiencies or the plan administrator's public website
2 containing the deficiency notices. At the same time, the purchaser sent a due diligence team,
3 including engineers, to evaluate the physical premises it was buying and ultimately negotiated a
4 significant reduction in the purchase price based on their findings. The Ninth Circuit concluded
5 that, "[i]n these circumstances, a reasonable purchaser would have taken additional actions to
6 determine if withdrawal liability existed," such as reviewing the publicly available documents,
7 asking for copies of all notices the seller had received, and/or requiring the seller to obtain from
8 the plan an estimated amount of withdrawal liability. Id.


9 In this case, all 23801 Newhall knew was that SCCC was a party to a collective
10 bargaining agreement. 23801 Newhall had no previous experience or familiarity with multi-
11 employer pension plans or the concept of withdrawal liability. SCCC expressly stated that it was
12 not participating in any pension or benefit plans. Plaintiff argues that a thorough reading of the
13 collective bargaining agreement would have shown that SCCC misrepresented this important
14 fact and may have led 23801 Newhall to the plan administrator, which could then have provided
15 information regarding SCCC's potential withdrawal liability. 23801 Newhall was not assuming
16 any right or obligations under the collective bargaining agreement, however: given the
17 information 23801 Newhall had, further investigation was simply not indicated.

18 Plaintiff has not produced any evidence to rebut Mr. Kim's statements regarding 23801
19 Newhall's state of knowledge, relative sophistication regarding pension matters, or the
20 negotiation of the Asset Purchase Agreement. The Court finds, based on the undisputed facts,
21 that 23801 Newhall did not have actual or constructive notice of SCCC's potential withdrawal
22 liability at the time of the asset purchase. The Court further finds that the imposition of
23 withdrawal liability on the successor in these circumstances would be unfair even when balanced
24 against the protective purposes of the federal statutes at issue.

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1 For all of the foregoing reasons, defendant's motion for summary judgment is
2 GRANTED. The Clerk of Court is directed to enter judgment in favor of defendant 23801
3 Newhall Avenue, LLC, and against plaintiff.

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5 Dated this 9th day of November, 2018.

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8 Robert S. Lasnik
9 United States District Judge
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